

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 870 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?  
( No. 1 to 5 NO )

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ASHWINKUMAR SHANTILAL

Versus

STATE OF GUJARAT

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Appearance:

MR BJ JADEJA for Petitioners

Mr. L.R. Poojari, Ld.Govt.Counsel for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 12/08/97

ORAL JUDGEMENT

Placing reliance upon the Supreme Court pronouncement in State of Gujarat, Appellant V. Patel Raghav Natha & others, Respondents, A.I.R. 1969, S.C. pg. 1297, and upon this High Court pronouncement in Zabir Mohmad Hafezi Ismail Patel & Ors. vs. State of Gujarat & Ors, 38(1) G.L.R. pg. 140, ld. counsel Mr. B.J. Jadeja appearing on behalf of the petitioners urges that, the ME No. 479 dated 7-7-1978 which came to be certified by the Circle Officer on 15-8-1978 could not

have been taken in suo motu revision under the notice dated 7-12-1982 and that, the said entry could not have been set aside under the orders dated 17-2-1983.

The petitioners are the residents of village Sukhpar under Halvad taluka of Surendranagar district and happen to be the real brothers. The land bearing Survey No. 188 of village Sukhpar was entered in the name of petitioner no.1 in the Revenue Record. It appears that, under a transaction which has been described as a partition, the above said land had gone to the petitioner no.2. The ME No. 479 came to be posted in the Revenue Record on 7-7-1978. The said entry came to be certified by the Circle Officer on 15-8-1978. The Assistant Collector had given the show cause notice on 7-12-1982 calling upon the petitioners to show cause, as to why the said entry should not be set aside under the suo motu revisional powers of the Assistant Collector. Ultimately the Ld. Assistant Collector was pleased to pass the necessary orders on 17-2-1983, directing the cancellation of the above said entry. The said orders were challenged before the Special Secretary, Revenue (Appeals) by filing the Appeal No: SRD-RTS-97/83, 483/84, but unsuccessfully. Ultimately, the said orders are being challenged in the present petition before me.

As pointed out by me, learned counsel for the petitioners Mr. Jadeja placing reliance upon the above said two decisions, one of the Supreme Court and the second one of this Court urges that, the suo motu revisional powers could not have been exercised after such a pretty long time. The Supreme Court has indeed taken a view, which appears to be fully supporting the contention being raised by learned counsel Mr. Jadeja before me. The Supreme Court pronouncement in case of Patel Raghav Natha & Ors (supra) says that, the power of the Commissioner to revise the orders must be exercised within a few months and that, the revising authority must give reasons for his conclusion. This High Court pronouncement in case of Zabir Mohmad Hafezi Ismail Patel & Ors (supra) makes it clear that, the orders of cancellation of N.A. permission passed after 13 months in exercise of revisional powers were required to be set aside. it has been said that, the order passed by the revisional authority were liable to be set aside on the ground of delay alone.

Here, in the petition before me, the entry in question came to be posted in the Revenue Record on 7-7-1978, and came to be certified on 15-8-1978. For the first time in December 1982, the revisional powers were

sought to be exercised by giving the necessary notice. It appears that, while doing so the principle laid down by the Supreme Court and this Court in the above said two decisions has been violated. Present petition therefore requires to be allowed on that count alone. The same is hereby allowed. The orders impugned in the petition are hereby quashed and set aside, and the M.E. in question is ordered to be restored and/or maintained. Rule is made absolute accordingly, with no order as to costs.

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/vgn